19 50 K **File No.** Constitution II/50 (R)

Legal Deptt.

B: **BRANCH**

sub 2916

Subject:— Rules under the Constitution of India

Part E

File No. Constitution II/50 (R).

Gen. 194 a.

218-B

Legal Department.

In place of the draft at page 18 ante, a revised draft notification is sent herewith.

2. By the Bombay Commissioners (Abolition of office) Bill, 1950 (L.A.Bill No. XII of 1950), which has been passed by both the Houses of the State Legislature and which will shortly be published as an Act after receiving assent, the words "Commissioner of Sales Tax" occuring in the Bombay Sales Tax Act, 1946, are being replaced by the words "Collector of Sales Tax". The Department may therefore issue the present notification after that Act is published in the Gazette.

Sd/-

Additional Secretary to Government.

U.R.to P.& S.D., No. 5123, dated the 14th April 1950.

N.V.D.
21/6
4.

Office of the F.L.A.

Attention is invited to F.L.A's opinion No.4084, dated 24th March 1950.

2. The view taken by the Bombay Public Service Commission that the statement in the Uttar Pradesh Advertisement that preference will be given to persons domiciled in Uttar Pradesh is contrary to the Provisions of the Constitution is correct. (See Article 16).

Sd/-

Remembrancer of Legal Affairs.

U.P. to P. & S.B.No. 7039, dated the 24th May 1950.

N.V.D.
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Office of the R.L.A.

The presumption made by F. and S.D. that the provision of rule 4 are not saved by article 313 of the Constitution is correct.

2. As regards the proposal of F. and S.D. to approach the Government of India for undertaking necessary legislation under article 16(3) of the Constitution, it may be stated that the requirement that can be prescribed by Parliament by Law under that article is with regard to residence and not domicile.

sd/-

Remembrancer of Legal Affairs.

U.F. to I. and S.D., No. 4084, dated the 24th March 1950.

N.V.D.
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Legal Department.

1. Clause (2) of Article 283 of the Constitution provides that

> "The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the State, and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State and until provision in that behalf is so made, shall be regulated by rules made by the Governor or Rajpramukh of the State."

In virtue of this provision the Finance Department under their notification No. 2624/33-F.M. dated 31st March 1950, have made a rule providing that matters referred to in the said sub-clause shall be regulated by rules made by the Provincial Government of the Province of Bombay under section 151 of the Government of India Act 1935 and in force on 25th day of January 1950, in so far as such rules are not inconsistent with the provision of the said ~~xxxxxx~~ Constitution and the said rules in their applications to the aforesaid matters shall be read subject to all necessary modifications.

The rules in force on the 25th day of January 1950 are the rules issued under F.D. notification No. 2643/33-A dated the 1st April 1937 called the Treasury Rules, Bombay, and it is further provided in that notification that the procedure to be followed in regard to all such matters shall be that laid down in the Treasury Rules of the Central Government made by the Governor-General under the said section except to the extent that the procedure laid down therein may be inconsistent with the said rules or

with any special orders or instructions issued by the Government of Bombay in this behalf. It will thus appear that a procedure inconsistent with that contained in the Central Treasury Rules can be prescribed under the F.D.rules referred to above; Article 283(2) of the Constitution which corresponds to section 151 of the Government of India Act 1935 provides that until provision for the matters mentioned in clause (2) of article 283 is made by Parliament by law the matter shall be regulated by rules made by the Governor of the State. The proposal of the F.D. is to (i) issue a rule to enable persons in the District of Baroda to pay into the Bank of Baroda money to be payable on the account of Revenues of the State of Bombay under the following heads:-

(1) Income-tax;

(2) Sales Tax;

(3) Central Excises and

(4) Civil Supplies Dues,

and (ii) to issue supplementary instructions as to the manner in which the money shall be paid. This proposal, as it will be seen from the provision of rule 7 of the Treasury Rules, Bombay, is inconsistent therewith. Under that rule all moneys on account of the revenues of the State are to be paid into treasury or into the 'bank' as defined in the rules. There does not appear to be any objection to prescribe a special procedure in respect of the local area i.e. the district of Baroda but in that case amendment of rule 7 of the Treasury Rules, Bombay, will be necessary under Article 283(2) of the Constitution. A revised draft amendment of the said rule is therefore sent herewith subject to the following observations:-

2. Under clause (2) of article 283 of the Constitution rules in respect of the matters connected with the custody of the C

Consolidated Fund of a State and the Contingency Fund of a State, the payment of the moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such funds received by or on behalf of the Government of the State can be made and no rules can be made under that clause by the Governor in respect of custody of the Consolidated Funds of India and the Contingency Fund of India, the payment of moneys into such funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such funds received by or on behalf of the Government of India. It will not, therefore, be legally feasible to make any rule regarding payment made on account of the revenues of the Government of India under the following heads proposed by F.D.:-

(1) Income-tax;

(2) the Central Excise (in so far as such Central Excises do not dorm part of the revenue of the Province under article 277 of the Constitution) and

(3) Civil Supplies Dues which are to be recieved by or on behalf of the Government of India.

The proposal, in short, will be valid only in so far as the payment of Sales Tax and payment of fees or other moneys payable under the order issued by the State Government or any officer subordinate to it under the following two Acts which are the Acts dealing mainly with the control of Civil Supplies are concerned :-

(1) The Essential Supplies and Temporary Powers Act, 1946; and

(2) The Bombay Essential Commodities and Cattle (Control) Act 1946.

The amendment to the rule has been made in such a manner that the power is taken thereunder to prescribe a procedure which a person paying the money has to adopt for the purpose of valid payment into the Bank of Baroda. The subsidiary instructions may therefore be issued

under a notification to be issued under rule 7. A draft notification is sent herewith.

5. Attention however of F.D. is invited to R.L.A.'s opinion No.201- Confidential, dated the 25th March 1950 wherein the R.L.A. after considering the provisions of the Reserve Bank of India Act 1934 and the agreement made with the Reserve Bank of India in virtue of the provisions of section 21 of that Act advised as follows:-

(1) Government shall not employ any other banker.

(2) Where the Reserve Bank has a branch or Agency, Government must deposit their cash balance with it,

(3) Where there is no such branch or agency the Government may by itself carry on money transactions.

That opinion was specifically given with reference to the question of depositing the money with the Bank of Baroda. It appears that the F.D. has made a reference to the Reserve Bank of India for their consent to the proposal under consideration but until the F.D. hears from the Reserve Bank of India no amendment of rule 7 of the Treasury Rules of Bombay will be competent in view of the R.L.A.'s opinion.

Sd/-

Additional Secretary to Government,

U.P. to F.D. No. 11860, dated the 21st August 1950.

N.V.D.
21/6
4c.